

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF OKLAHOMA

IN THE MATTER OF THE COMPLAINT OF  
BRUCE OAKLEY, INC. and JOHNSTON'S PORT  
33 INC., OWNERS OF THE M/V LEGACY, FOR  
EXONERATION FROM OR LIMITATION OF  
LIABILITY

Case No. 6:19-cv-00184-SLP

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ANSWER OF LMR FREIGHT, LLC AND MARQUETTE  
TRANSPORTATION COMPANY, LLC  
(Electronically Filed)

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COME NOW, LMR Freight, LLC and Marquette Transportation Company, LLC (hereinafter collectively referred to as "LMR Freight"), by counsel, for their Answer to the Complaint for Exoneration from, or Limitation of, Liability ("Complaint") of Bruce Oakley, Inc. and Johnston's Port 33, Inc. (hereinafter collectively referred to as "Limitation Petitioners"), respectfully state as follows:

1. LMR Freight admits in response to the allegations contained in paragraph 1 of the Complaint that Limitation Petitioners seek relief pursuant to 46 U.S.C. § 30505 and § 30511 and the various statutes, rules and regulations related thereto; that Limitation Petitioners allege an admiralty and maritime claim within the meaning of Rule 9(h) and Rule F of the Supplemental Rules of Certain Admiralty and Maritime Claims; and that this Court has jurisdiction over the action. However, LMR Freight denies the validity of Limitation Petitioners' claims.

2. LMR Freight is without sufficient information to admit or deny the allegations contained in paragraph 2 of the Complaint, and therefore they are denied.

3. LMR Freight is without sufficient information to admit or deny the allegations contained in paragraph 3 of the Complaint, and therefore they are denied.

4. LMR Freight is without sufficient information to admit or deny the allegations contained in paragraph 4 of the Complaint, and therefore they are denied.

5. LMR Freight is without sufficient information to admit or deny the allegations contained in paragraph 5 of the Complaint, and therefore they are denied.

6. LMR Freight admits that the LTD-11140 and the MTC-7256 (incorrectly identified as the MTC-7255 throughout the Complaint) barges were in the care, custody, and control of Limitation Petitioners' fleet prior to May 22, 2019. LMR Freight is without sufficient information to admit or deny the remaining allegations contained in paragraph 6, and therefore they are denied.

7. LMR Freight is without sufficient information to admit or deny the allegations contained in paragraph 7 of the Complaint, and therefore they are denied.

8. LMR Freight is without sufficient information to admit or deny the allegations contained in paragraph 8 of the Complaint, and therefore they are denied.

9. LMR Freight admits in response to the allegations contained in paragraph 9 of the Complaint that water levels were rising on the Arkansas River near Muskogee in May 2019, as well as prior to that time.

10. LMR Freight is without sufficient information to admit or deny the allegations contained in paragraph 10 of the Complaint, and therefore they are denied.

11. LMR Freight is without sufficient information to admit or deny the allegations contained in paragraph 11 of the Complaint, and therefore they are denied.

12. LMR Freight is without sufficient information to admit or deny the allegations contained in paragraph 12 of the Complaint, and therefore they are denied.

13. LMR Freight is without sufficient information to admit or deny the allegations contained in paragraph 13 of the Complaint, and therefore they are denied.

14. LMR Freight is without sufficient information to admit or deny the allegations contained in paragraph 14 of the Complaint, and therefore they are denied.

15. LMR Freight is without sufficient information to admit or deny the allegations contained in paragraph 15 of the Complaint, and therefore they are denied.

16. LMR Freight is without sufficient information to admit or deny the allegations contained in paragraph 16 of the Complaint, and therefore they are denied.

17. LMR Freight is without sufficient information to admit or deny the allegations contained in paragraph 17 of the Complaint, and therefore they are denied.

18. LMR Freight admits the allegations contained in paragraph 18 of the Complaint, except that the MTC-7256 is incorrectly identified as the MTC-7255.

19. LMR Freight admits the allegations contained in paragraph 19 of the Complaint.

20. LMR Freight admits that it sent written notice for costs incurred from the sinking to Bruce Oakley, Inc. To the extent not specifically admitted herein, the allegations of paragraph 20 are denied.

21. LMR Freight admits the allegations contained in paragraph 21 of the Complaint, except that the MTC-7256 is incorrectly identified as the MTC-7255.

22. LMR Freight denies the allegations contained in paragraph 22 of the Complaint. Upon information and belief, the cargo was owned by Consolidated Grain and Barge Co. and CGB Enterprises, Inc.

23. LMR Freight denies the allegations contained in paragraph 23 of the Complaint.

24. LMR Freight denies the allegations contained in paragraph 24 of the Complaint.

25. LMR Freight denies the allegations contained in paragraph 25 of the Complaint.

26. LMR Freight is without sufficient information to admit or deny the allegations contained in paragraph 26 of the Complaint, and therefore they are denied.

27. LMR Freight is without sufficient information to admit or deny the allegations contained in paragraph 27 of the Complaint, and therefore they are denied.

28. LMR Freight admits in response to the allegations contained in paragraph 28 of the Complaint that Limitation Petitioners seek exoneration from liability and assert certain defenses; however, LMR Freight denies that Limitation Petitioners are entitled to the relief sought.

29. LMR Freight admits in response to the allegations contained in paragraph 29 of the Complaint that Limitation Petitioners seek the benefit of the Limitation of Vessel Owners' Liability Act contained in 46 U.S.C. § 30501, *et. seq.*; however, LMR Freight denies that Limitation Petitioners are entitled to the relief sought.

30. LMR Freight is without sufficient information to admit or deny the allegations contained in paragraph 30 of the Complaint, and therefore they are denied.

31. LMR Freight admits in response to the allegations contained in paragraph 31 of the Complaint that Limitation Petitioners allege an admiralty and maritime claim; however, LMR Freight denies the validity of Limitation Petitioners' claims.

32. Any allegations contained in Limitation Petitioners' Complaint that are not specifically admitted are denied.

WHEREFORE, LMR Freight demands that Limitation Petitioners' Complaint for Exoneration from, or Limitation of, Liability be dismissed with prejudice, that all costs be taxed to Limitation Petitioners, and that LMR Freight receive any other relief that it may be entitled to receive based upon the proof.

#### AFFIRMATIVE DEFENSES

1. The value of the M/V LEGACY and/or limitation fund as set forth in the Complaint are deficient in form and quantum.

2. Limitation Petitioners have privity and/or knowledge of one or more of the acts of negligence and/or unseaworthy conditions that caused or contributed to the incident in question; and, therefore, Limitation Petitioners are not entitled to limitation of liability pursuant to 46 U.S.C. § 30501, *et seq.*, and/or Rule F of the Supplemental Rules of Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

3. The incident made the subject of the Complaint was caused by the negligence and/or comparative negligence of Limitation Petitioners and, therefore, Limitation Petitioners are not entitled to limitation or exoneration.

4. By virtue of the bailment relationship that existed between Limitation Petitioners and LMR Freight with respect to the LTD-11140 and MTC-7256 when they broke away from the Oakley Muskogee Fleet, Limitation Petitioners were the bailee of the LTD-11140 and the MTC-7256 at all relevant times and are presumed to be negligent for causing the breakaway of the LTD-11140 and the MTC 7256.

5. By virtue of their exclusive possession and control of the LTD-11140 and MTC-7256, Limitation Petitioners are presumed negligent for causing the breakaway of the LTD-11140 and MTC-7256 pursuant to the doctrine of *res ipsa loquitur*.

6. LMR Freight, as the manager, operator, and/or owner *pro hac vice* of the LTD-11140 and MTC-7256 barges, avers that its liability, if any, is limited to its interest in the LTD-11140 and MTC-7256 and their pending freight immediately after those barges sank and pleads any and all rights it may have for exoneration from or limitation of liability pursuant to the Limitation of Liability Act, 46 U.S.C. § 30501, *et. seq.*

7. To the extent that any of the defenses set forth in Rule 8(c) of the Federal Rules of Civil Procedure are applicable to the claims asserted, they are alleged as defenses.

8. LMR Freight reserves the right to supplement its answer and assert additional defenses to the Complaint as the facts may warrant.

WHEREFORE, LMR Freight, LLC and Marquette Transportation Company, LLC, having fully answered and having pled affirmatively, again deny that Limitation Petitioners are entitled to the relief requested in their Complaint for Exoneration from, or Limitation of, Liability, and again demand that Limitation Petitioner's Complaint for Exoneration from, or Limitation of, Liability be dismissed with prejudice with all costs taxed to Limitation Petitioners, and that pursuant to the claims filed with this Answer, the Court award LMR Freight, LLC and Marquette Transportation Company, LLC damages in an amount to be determined at trial, together with interest from the date of occurrence until paid, attorneys' fees and all costs and for all other general and equitable relief that the justice of the cause may require.

RESPECTFULLY SUBMITTED, this the 30th day of September, 2019.

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#### CERTIFICATE OF SERVICE

I hereby certify that I have this the 30th day of September, 2019, electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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